

City of Sunnyvale
The City Attorney's Office
P.O. Box 606017
Sunnyvale, CA 94088

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8525747

ATTACHMENT F

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DESIGN PERMIT AGREEMENT

RECORDED
AT REQUEST OF

City Atty.

SEP 12 11 17 AM 1985

OFFICIAL RECORDS
SANTA CLARA COUNTY
LAURIE KANE
RECORDER

BLDG 107
217,010 sq. ft.

This AGREEMENT, made and executed this 10th day
of September, 1985, by and between the CITY OF
SUNNYVALE, a municipal corporation, hereinafter referred to as
"City"; and LOCKHEED MISSILES AND SPACE COMPANY, INC., a
California corporation, hereinafter referred to as "Lockheed";

W I T N E S S E T H:

WHEREAS, Lockheed is the owner of that certain plot of land
situated in the City of Sunnyvale, Santa Clara, California, as
shown on the attached Exhibit "B", hereinafter referred to as
the "Plot"; and

WHEREAS, Lockheed as owner of said Plot has undertaken
development of same; and

WHEREAS, City, pursuant to its present General Plan, is
evaluating the extension of Mary Avenue at some time in the
future; and

WHEREAS, said extension of Mary Avenue could pass through
said Plot;

NOW, THEREFORE, in consideration of the granting of a Design
Permit for the construction of Building 107 on said Plot, the
parties hereto mutually covenant and agree as follows:

1. Lockheed agrees to reserve the remaining portion of the
Plot, other than that portion of same required for the development
of Building 107 including required parking area for said building,
which reserved portion of the Plot is shown on Exhibit "B" and
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hereinafter referred to as the "Reserved Plot", for the sole purpose of constructing a potential extension of Mary Avenue, and at such time as requested by the City to dedicate to the City such right-of-way across the Reserved Plot as may be required for the implementation of any future Mary Avenue extension and associated improvements as approved by the City Council.

2. The right-of-way to be dedicated by Lockheed to City shall be that necessary to construct the Mary Avenue extension as finally determined and approved by the City Council following the conclusion of the North/South Corridor Study, Phase II, presently expected to commence in the immediate future, and being funded jointly by the City and Lockheed.

3. City agrees to consult with Lockheed in good faith to determine a choice of alignment for the proposed Mary Avenue extension which will provide for the desired traffic flow, take into consideration other alternatives which may result from the North/South Corridor Study referred to supra, which may be more desirable than any presently proposed Mary Avenue extension, and the restrictions and requirements of agencies or jurisdictions whose approval is required by the Project, such as Cal Trans, while minimizing the interference with Lockheed's legitimate uses of the Reserved Plot. However, notwithstanding said obligation, City shall have the sole discretion after such good faith consultation to select its preferred alternative and to require dedication of the right-of-way across the Reserved Plot for such preferred alternative.

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4. A. In the event that at the conclusion of the North/South Corridor Study, Phase II, the City Council approves the further evaluation of only one route, or of routes in substantially the same corridor, such that these preferred routes are similar and involve essentially the same alignment, then City will, at such time, execute and record a release from the requirement of dedication under this Agreement of the remainder of the Reserved Plot outside such corridor.

B. If the alternatives approved by the City Council for further evaluation and coordination with other affected agencies such as Cal Trans are for substantially different alignments ^{involving the Reserved Plot, *for SEM*} /the City will continue to maintain its rights under this Agreement to ultimately require dedication of a sufficient property to accommodate its chosen route. City will continue to maintain such rights under this Agreement until a single preferred alternative is agreed upon and approved by the City and by the California Department of Transportation. This approval will be in conjunction with the studies and designs being performed as part of the Measure A projects administered by the Santa Clara County Traffic Authority. City will, at such time as a final determination of route is made by City and Cal Trans, or a determination is made not to proceed with the Mary Avenue extension in the future, execute and record a release from the requirement of dedication of the remainder of the Reserved Plot outside such corridor.

C. Lockheed may apply for an amendment to its Design Permit for Building 107, to request that a definite time limit

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be established on its obligations set forth in this agreement to dedicate land for the Mary Avenue extension. It is understood and agreed by the parties that City staff, in the event that Lockheed does make such an application, will recommend that such Design Permit be modified to provide that, in the event City does not exercise its rights under this Agreement to require dedication by notifying Lockheed pursuant to Paragraph 7 herein, by such date as is recommended by City staff, then all obligations of Lockheed to dedicate land pursuant to this Agreement shall expire, and City shall promptly thereafter record such documents as are necessary to clear the title to Lockheed's property of the restrictions imposed under this Agreement.

D. With respect to the Mary Avenue extension studies, City agrees to advise Lockheed by the end of 1986 of the status of the City's progress relative to its proposed determination as to the Mary Avenue extension alignment.

5. City agrees that, up to the time of acceptance by City of this offer of dedication, Lockheed may continue to use the Reserved Plot provided that such use shall not be of a nature so as to ultimately prevent the extension of Mary Avenue as City may elect. City agrees to issue permits to Lockheed for such permissible use of the Reserved Plot.

6. City agrees that this offer of dedication will not be accepted until such time as a proposed alignment of the Mary Avenue extension has been approved in final form by the City Council as well as by any other agencies or jurisdictions whose approval is required for the extension, such as Cal Trans.

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7. Such acceptance by City of this dedication offer will be effected by the City notifying Lockheed by certified mail of its acceptance to the attention of Vice-President, Operations, and setting forth in detail that portion of the Reserved Plot required for dedication. Following receipt of the City's acceptance, Lockheed will deed the dedicated portion of the Reserved Plot to the City.

8. If effected, after completion of the Mary Avenue extension by City, City shall cooperate with Lockheed in the granting of easements for utilities as appropriate and necessary for the further development of the Reserved Plot.

9. Provided that City accepts Lockheed's dedication offer of land as provided in this Agreement, at the time of award of the construction contract by the City Council of the Mary Avenue extension, provided that the project is not financed through assessment district proceedings, Lockheed agrees to contribute toward the cost of the project a sum of money equal to that typically required by City of developers, namely, the cost of improving a two lane, at grade roadway with full improvements along the length of the subject parcel. Said contribution shall not exceed the sum of the estimated present cost of such construction, One Million One Hundred Thousand Dollars (\$1,100,000), plus an increment calculated as follows:

The percentage of increase shown in the Engineering Newsrecords ("ENR") Construction Price Index, for the first year from the date of execution of this contract, shall be added to the base figure of \$1,100,000. Thereafter,

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MAY 13 1963

in each successive year the annual increase based on this index shall be added to the total for the prior year up until the final date for the opening of bids for the last construction contract for the construction project which includes this Mary Avenue Extension. Any remaining months after the last yearly calculation shall be calculated based upon the monthly adjustments to said index furnished by ENR.

The cost of any desired overbuild beyond a roadway of that capacity shall not be the responsibility of Lockheed.

10. Lockheed's share of the costs as provided for in paragraph 9 above will be deposited with the City at time of award by the City Council of the construction contract for the project. This money shall be held by City in an interest-bearing account until such times as the funds are paid out to the construction contractor pursuant to the terms of the contract on the project. Any interest earned on these funds prior to payment to the contractor of same shall be returned to Lockheed. Furthermore, if all of said funds are not required to be paid out to the construction contractor for completion of the Mary Avenue extension project pursuant to the contract, then any such excess funds shall be returned to Lockheed within sixty (60) days after acceptance of the project by the City Council.

11. Nothing in this Agreement is intended to preclude additional development of the Reserved Plot, provided that such development is in conformance with applicable City codes and ordinances, and further provided that it does not conflict with any of the terms of this Agreement.

12. In the event that City abandons or terminates that portion of its General Plan which anticipates an extension of Mary Avenue through the subject Reserved Plot, City agrees to take such steps as are necessary to clear the title to Lockheed's property of this dedication offer.

13. This written instrument constitutes the entire agreement between the parties and shall not be varied, amended or supplemented except by an instrument in writing executed by both parties.

State of CaliforniaCounty of Santa Clara

} SS.

On this the 5th day of September 19 85, before me,ANN C. KAILA

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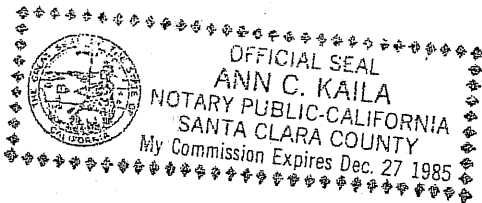
the undersigned Notary Public, personally appeared

E. A. THOMPSON

☒ personally known to me
☐ proved to me on the basis of satisfactory evidence
 to be the person(s) whose name(s) is subscribed to the
 within instrument, and acknowledged that he executed it.
 WITNESS my hand and official seal.

Ann C. Kaila

Notary's Signature

State of CaliforniaCounty of Santa Clara

} SS.

On this the 10 day of September 19 85, before me,Mary E. West

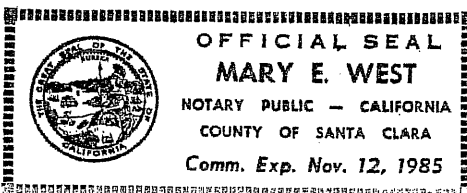
the undersigned Notary Public, personally appeared

John E. Mercer

☒ personally known to me
☐ proved to me on the basis of satisfactory evidence
 to be the person(s) who executed the within instrument as
Mayor or on behalf of the corporation therein
 named, and acknowledged to me that the corporation executed it.
 WITNESS my hand and official seal.

Mary E. West

Notary's Signature



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12. In the event that City abandons or terminates that portion of its General Plan which anticipates an extension of Mary Avenue through the subject Reserved Plot, City agrees to take such steps as are necessary to clear the title to Lockheed's property of this dedication offer.

13. This written instrument constitutes the entire agreement between the parties and shall not be varied, amended or supplemented except by an instrument in writing executed by both parties.

Date: September 5, 1985LOCKHEED MISSILES & SPACE CO., INC.
a California corporationBy E. A. Thompson
E. A. Thompson
Vice-President, OperationsDate: 9-10-85CITY OF SUNNYVALE,
a municipal corporationBy J. M. Meres
MayorATTEST:
City ClerkBy Carol Ann Butler
Deputy City Clerk

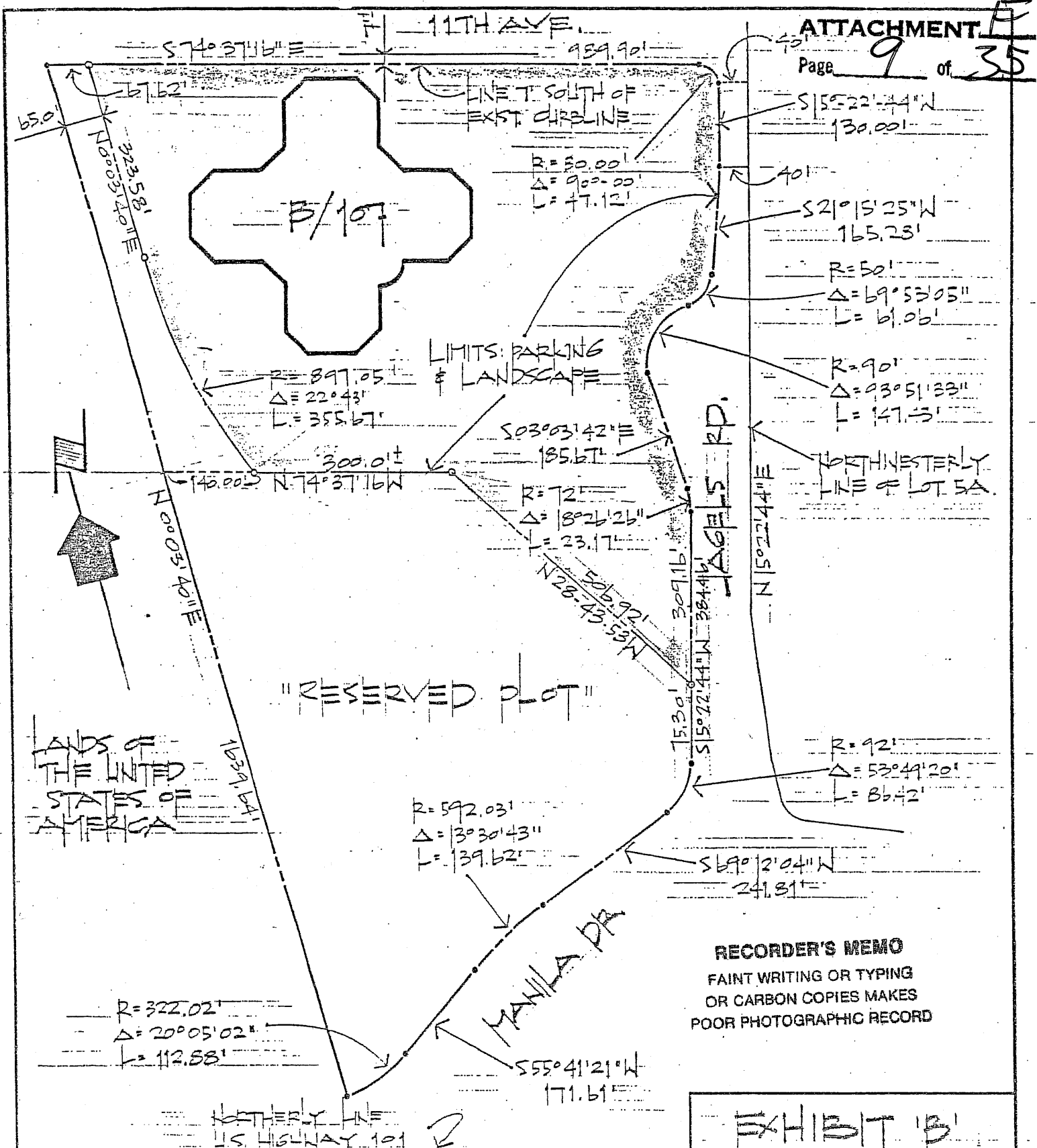
(SEAL)

APPROVED AS TO FORM:

Donald P. Scott
Asst. City Attorney

ATTACHMENT F

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LOCKHEED

MISSILES & SPACE COMPANY
A GROUP DIVISION OF LOCKHEED AIRCRAFT CORPORATION
SUNNYVALE, CALIFORNIA

DRWG. TITLE EXHIBIT MAP B: RESERVED PLOT

LOCATION SUNNYVALE CALIFORNIA

ORGN. 45-51

DATE

DRAWN J. C. 12

6/14/55

CHECKED

APPROVED

APPROVED

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A

EXHIBIT "B"

Description of "Reserved Plot" portion of Land of Lockheed, Sunnyvale, California

Being a portion of Parcel One as shown on that certain map recorded in Book 496 of Maps at Page 3, Santa Clara County Records, and as shown on that certain Record of Survey recorded August 10, 1984 in Book 532 of Maps at Pages 36 through 40, Santa Clara County Records, and being more particularly described as follows:

Beginning at the Southwesterly corner of said Parcel One as shown on said maps;
Thence North $0^{\circ} 03' 40''$ East along the Westerly line of said parcel One 1,639.64 feet;

Thence leaving said Westerly line South $74^{\circ} 37' 16''$ East 67.62 feet;

Thence South $0^{\circ} 03' 40''$ West along a line parallel to and a distance of 65.00 feet Easterly, measured at right angles, from said Westerly line of Parcel One as shown on said maps, 323.58 feet;

Thence along the arc of a tangent curve to the left having a radius of 897.05 feet, through a central angle of $22^{\circ} 43' 00.48''$ for an arc length of 355.67 feet;

Thence South $74^{\circ} 37' 16''$ East 300 feet more or less;

Thence South $28^{\circ} 43' 53''$ East 506.92 feet to a point on the Westerly edge of Manila Drive;

Thence South $15^{\circ} 22' 44''$ West 75.30 feet;

Thence along the arc of a tangent curve to the right, having a radius of 92.00 feet, through a central angle of $53^{\circ} 49' 20''$ for an arc distance of 86.42 feet;

Thence South $69^{\circ} 12' 04''$ West 241.81 feet;

Thence along the arc of a tangent curve to the left, having a radius of 592.03 feet, through a central angle of $13^{\circ} 30' 43''$ for an arc distance of 139.62 feet;

Thence South $55^{\circ} 41' 21''$ West 171.61 feet;

Thence along the arc of a tangent curve to the right, having a radius of 322.02 feet, through a central angle of $20^{\circ} 05' 02''$ for an arc distance of 112.88 feet to the Point of Beginning.

Containing 11.08 Acres more or less.



TO THE HONORABLE MAYOR AND COUNCIL

DATE: July 9, 1985**SUBJECT:** North/South Corridor Study, Phase II - Approval of AgreementsReport in Brief

Following an evaluation of written proposals and oral presentations/interviews, as well as negotiations with the prospective consulting teams and Lockheed, staff is recommending that:

1. The City Council authorize the Mayor to sign the attached agreement with the consulting team of CH2M Hill/DKS in the amount of \$221,350, for the performance of the second phase of the North/South Corridor Study.
2. The City Council authorize the Mayor to sign the attached agreement with Lockheed Missiles and Space Company concerning the joint funding of this study. The agreement calls for Lockheed to contribute \$64,280 toward the total cost of the study.

Background

In 1983, the City (via a consultant) concluded the first phase of the North/South Corridor Study. The focus of the first phase study was to look at potential options for accommodating the travel demand in the north/south direction and evaluate the feasibility and relative priority of each alternative. The key findings were that additional lanes could probably be added to Lawrence Expressway, that Mary Avenue could be extended past Routes 101 and 237 into or through the Lockheed area, and that a previously unexpected alternative called the "Mathilda Flyover" could possibly be constructed to elevate several lanes of traffic above the median area of Mathilda Avenue over State Route 237 and the four signalized intersections at Ross Drive, the on and off ramps, and the Moffett Park/Jagels Drive intersection with Mathilda Avenue.

In a study session the consulting team (Barton-Aschman/Nolte) recommended that the City continue pursuit of the additional lanes on Lawrence Expressway and a more detailed study of the Mathilda Flyover. It was also recommended that the City not proceed with the Mary Avenue extension because it appeared that the Mathilda Flyover might accommodate the potential traffic demand at considerably less cost than any of the options for extending Mary Avenue. At that time the City Council indicated concurrence but also directed the staff to assure preservation of the option of extending Mary Avenue. There was concern that the Mathilda Flyover may not be a practical or preferred alternative for the City and also a feeling that an extension of Mary Avenue might be needed in the future in addition to a Mathilda Flyover.

City staff recommended the inclusion of a more detailed follow-up study of the Mathilda Avenue Flyover for the City's 1984/85 Capital Improvement Plan. Just prior to City Council consideration of the proposed \$150,000 study, staff was approached by Lockheed

North/South Corridor Study, Phase II - Approval of Agreements

July 9, 1985
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Missiles and Space Company which expressed an interest in performing further studies to gather more information concerning the potential for the Mary Avenue extension and the impact it might have upon their property and future development plans. Based upon staff's discussions between the City and Lockheed it was decided to tentatively include additional study of Mary Avenue alternatives in the proposed second phase of the north/south study being proposed by City staff.

Discussion

In February of 1985, requests for proposals were sent to six civil engineering and transportation engineering consulting firms. The request for proposal was jointly prepared and agreed to by both City and Lockheed staff members. Additionally, the RFP was sent to firms which the City staff and Lockheed staff thought would be most appropriate for the conduct of the second phase of the North/South Corridor Study. At this time an evaluation process for the proposals was established on the basis of seven specific criteria with point values ranging from either zero to ten points or zero to twenty points per criteria. In general the criteria were based upon the firm's past experience, evaluation of individuals, the firm's familiarity with Caltrans and Moffett Field issues, proposed study cost, proposed study timeframe, proposed scope of work, etc. The written proposals were evaluated by the City's Director of Public Works, Assistant City Engineer, City Traffic Engineer and Lockheed's Manager of Facilities Engineering. Following the independent evaluations it was decided that the proposals received from all four consulting teams (JHK & Associates/Creegan and D'Angelo, Barton-Aschman/George S. Nolte & Associates, Mark Thomas & Co./TJKM, CH2M Hill) were responsive and reasonably competitive. It was therefore decided that all four consulting teams be invited to an oral presentation/interview in order to make the final selection.

The oral process was held in mid-April and included evaluations by the Assistant City Engineer, City Traffic Engineer and Lockheed's Manager of Facilities Engineering. Following that process it was unanimously decided by the evaluators that the consulting team of CH2M Hill/DKS would be the best choice for this study from both the City and Lockheed's perspective. There were several major reasons for the emergence of this particular proposal being rated the most highly:

1. They were the only consulting team to include a Citywide transportation modeling process in their project. Additionally, this model will be turned over to the City for our continued use in future years.
2. They propose to include cost effectiveness studies of each alternative through the use of computerized econometric models. This is a method of evaluating each alternative or its component elements by establishing values for both quantitative and qualitative aspects of the transportation alternatives. This is especially useful in comparing alternatives and also in establishing priorities and staging of the improvements being recommended.
3. Their proposal included consideration and study of several new alternatives which may hold some promise in light of the currently ongoing "Measure A" planning and construction process. The improvements to State Routes 101 and 237 were not anticipated to occur in the foreseeable future when the first phase of the North/South Corridor Study was conducted.

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AgreementsJuly 9, 1985
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4. The proposal placed much greater emphasis on review, approval and coordination with Lockheed, the Moffett Naval Air Station and especially Caltrans. Caltrans' coordination/involvement is critical since any of the alternatives will require their review and approval.
5. The proposal included considerably greater detail and effort in terms of data collection, traffic counts, origin-destination surveys, modeling, calibration and traffic analyses.

Following the evaluation process City staff initiated negotiations with the CH2M Hill/DKS consulting team regarding an agreement for consulting services and with Lockheed Missiles and Space Company regarding a joint funding agreement for the study. The agreement with the consulting team basically calls for the study to be performed in accordance with their amended and final proposal which sets forth a six month study at a cost of \$221,350. The agreement also sets forth the cost sharing proportion between Sunnyvale and Lockheed for each major task in the study. It shows that Sunnyvale's share of the study cost will be \$157,070, while Lockheed's share will be \$64,280. This cost sharing was based on the premise that Lockheed would be responsible for all incremental study costs added due to the Mary Avenue examination which would not have been part of the originally planned City of Sunnyvale study. Lockheed has agreed to this approach and to their funding participation as it is described in the attached joint funding agreement.

Fiscal Impact

The consulting contract in the amount of \$221,350 will be paid from Account 923.41. There is approximately \$145,000 in this account left unspent from Fiscal Year 1984-85 and an additional \$111,000 in this account budgeted for Fiscal Year 1985-86. Lockheed will be contributing \$64,280 toward the cost of this study.

Public Contact

Publication of the Council agenda in the newspaper.

Recommendation

That the City Council:

1. Authorize the Mayor to sign the Agreement for Engineering Services with CH2M Hill.
2. Authorize the Mayor to sign the joint funding agreement with Lockheed Missiles and Space Company.

Prepared by: RCW
City Traffic Engineer

Thomas F. Luvial
City Manager

Edward James
Director of Public Works

Appendices:

1. Agreement with CH2M Hill.
2. Agreement with Lockheed.

AGREEMENT FOR ENGINEERING SERVICES FOR
MATHILDA AVENUE FLYOVER/MARY AVENUE EXTENSION PROJECT

THIS AGREEMENT is made and entered into this 30th day of June, 1985, by and between the CITY OF SUNNYVALE, a municipal California corporation (hereinafter referred to as "CITY"), and CH2M HILL CALIFORNIA, INC., a California corporation (hereinafter referred to as "CONSULTANT").

WITNESSETH:

WHEREAS, the CITY requires engineering services to perform a detailed study to determine the specific operation and benefit of the proposed "Mathilda Flyover" and analyses of additional alternatives, including the extension of Mary Avenue north to the property of Lockheed Missiles and Space Company, and other engineering services; and

WHEREAS, the CONSULTANT is duly licensed as a registered Professional Engineer in the State of California, is qualified and experienced to provide such services, and has the personnel and facilities necessary to accomplish the work within the required time.

NOW, THEREFORE, in consideration of the mutual covenants, agreements and conditions contained herein, CITY and CONSULTANT agree as follows:

ARTICLE 1: CONSULTANT'S SERVICES. The CONSULTANT shall perform professional services required by the CITY, in accordance with the terms of that certain document entitled "scope of services", (Exhibit "A"), attached and incorporated herein by this reference, and that

certain proposal document entitled "Proposal for Engineering study; Mathilda Avenue Flyover Mary Avenue Extension," dated March, 1985, as supplemented by that letter proposal from consultant dated April 15, 1985 (confirming the association of DKS Associates as subcontractors), which proposal and letter are hereby incorporated by this reference. Time for performance shall be six (6) months from notice to proceed in accordance with the "Study Schedule" set forth in said proposal. It is agreed between the parties to this Agreement that the CONSULTANT will not be responsible for delays occasioned by factors beyond its control, nor by factors which could not reasonably have been foreseen at the time the Agreement was prepared.

ARTICLE 2: COMPENSATION AND PAYMENT FOR SERVICES. CITY shall pay CONSULTANT for the work and services rendered pursuant to this agreement, at CONSULTANT's rates for such services set forth in Exhibits "B" and "C", attached and incorporated herein by this reference, within sixty (60) days of receipt of monthly invoices for such services. Each invoice shall be itemized sufficiently to allow calculation and apportionment of the cost of said services between CITY and Lockheed Missles and Space Company, in accordance with the terms of a separate contract for joint funding of said services. In no event shall total payments made exceed the sum of Two Hundred Twenty-one Thousand, Three Hundred Fifty Dollars (\$221,350.00), which sum is the agreed total price for all work to be performed pursuant to this agreement.

A. Other Compensation. In the event of any legal or other controversy requiring the services of the CONSULTANT in providing expert testimony in connection with the PROJECT, to the extent that such services are not included within the terms of Exhibit "A" hereof, the CITY shall pay the CONSULTANT for services rendered in regard to such legal or other controversy, including costs of preparation for the controversy, on a basis to be negotiated.

ARTICLE 3: AVAILABILITY OF DATA. The CITY shall make available to the CONSULTANT all relevant technical data in the CITY's possession, including maps, reports, drawings, surveys, borings, and other information required by the CONSULTANT relating to this work.

ARTICLE 4: PROFESSIONAL STANDARDS. CONSULTANT shall be responsible, to the level of competency presently maintained by other practicing professional engineers in the same type of work in CITY's geographical area, for the professional and technical soundness, accuracy, completeness and adequacy of all designs, drawings, specifications, and other work and materials agreed to be furnished under this Agreement. CONSULTANT makes no other warranty, express or implied.

ARTICLE 5: SOILS WORK. In soils investigation work and in determining subsurface conditions for the PROJECT, it is understood that soil characteristics may vary greatly between successive test points and sample intervals. The CONSULTANT will perform this work in accordance with generally accepted soils engineering practices and shall use this information to the same extent as would any

independent engineer in making its recommendations to the CITY on the PROJECT, and makes no other warranty, express or implied.

ARTICLE 6: COST ESTIMATES. The estimates of cost for the PROJECT provided for herein are to be prepared by the CONSULTANT through exercise of its experience and judgement in applying presently available cost data, but it is recognized that CONSULTANT has no control over cost of labor and materials, or over competitive bidding procedures and market conditions, so that it cannot warrant that the project construction costs will not vary from its cost estimates.

ARTICLE 7: TERMINATION. This Agreement may be terminated:

A. In whole or in part in writing by either party in the event of substantial failure by the other party to fulfill its obligations under this Agreement without fault of the terminating party.

B. At any time by CITY for good cause. Good cause shall be limited to, legal or financial reasons; major changes in the work or project requirements; initiation of new steps in the project, or dissatisfaction with CONSULTANT's performance.

Termination of the Agreement shall be effective ten (10) calendar days following the notice of transmittal of termination in writing by certified mail, return receipt requested to the other party. Upon receipt of a notice of termination (unless the notice directs otherwise) and cancel services or products which CONSULTANT had ordered in accordance with this Agreement.

CONSULTANT shall be compensated for all work performed prior to time of receipt of notice of termination, and shall be compensated

for materials ordered by the CONSULTANT or its employees, or services of others ordered by the CONSULTANT or its employees prior to receipt of notice of termination, whether or not such materials or final instruments of services of others have actually been delivered, provided that CONSULTANT is not able to cancel such orders for materials or services of others.

CITY shall compensate CONSULTANT in the event of termination based upon the amounts established by this Agreement and attachments hereto. Where the provisions of this Agreement cannot be applied, the payment shall be based upon a reasonable estimated percentage of the work completed.

In the event of termination, CONSULTANT shall deliver or otherwise make available to CITY all data, drawings, specifications, reports, estimates, summaries, and other such information and materials as may have been accumulated by CONSULTANT in performing this Agreement, whether completed or in progress.

Upon termination pursuant to this article, CITY may take over the work and prosecute the same to completion by agreement with another party or otherwise. Any work taken over by CITY for completion by CITY will be completed at CITY's risk and CITY will hold CONSULTANT harmless from all claims and damage arising out of improper use of CONSULTANT's work.

ARTICLE 8: OWNERSHIP OF DOCUMENTS. All maps, designs, reports, work, data, and other documents completed or partially completed by CONSULTANT in the performance of this Agreement shall become the

property of CITY. Any reuse of documents by CITY for purposes other than intended by this PROJECT will be at CITY's risk.

ARTICLE 9: INDEPENDENT CONTRACTOR. CONSULTANT is an independent contractor retained by the CITY to perform the work described herein. All personnel employed by the CONSULTANT, including subcontractors and personnel of said subcontractors approved by the CITY, are not and shall not be deemed to be employees of the CITY. The CONSULTANT and approved subcontractors shall comply with all State and Federal laws pertaining to employment and compensation of their employees or agents, including the provision of Worker's Compensation. The CITY shall not, under any circumstances, be liable to CONSULTANT or any person or persons acting for CONSULTANT for any death, injury, or property destruction or damage received or claimed relating to or stemming from the activities undertaken pursuant to the Agreement.

ARTICLE 10: ASSIGNMENT. CITY is entering into this Agreement in consideration of the rendition of services required herein by CONSULTANT. CONSULTANT shall not assign any of the duties, responsibilities, or obligations of this Agreement to any other firm, company, entity, or individual, except with the express written consent of CITY, and then only upon such terms and conditions as CITY may set forth in writing. Nothing set forth in this paragraph shall preclude CONSULTANT from assigning any of the money due and owing to it from the CITY. CITY hereby approves the association of the professional engineering firm of DKS Associates, of San Jose, California, as a subcontractor providing certain engineering services

to CONSULTANT. CONSULTANT shall be solely responsible for the duties, performance, and compensation of all subcontractors.

ARTICLE 11: INDEMNIFICATION. CONSULTANT shall defend, indemnify, and hold harmless, the CITY and its officers and employees from and against all claims, losses, damage, injury, and liability for damages arising from negligent acts, errors or omissions of the CONSULTANT in the performance of its services under this Agreement. Acceptance of the insurance certificates required under this Agreement does not relieve the CONSULTANT from liability under this indemnity and hold harmless clause.

ARTICLE 12: INSURANCE. During the term of this Agreement, CONSULTANT shall maintain in full force and effect at its own cost and expense, the following coverage:

A. Worker's Compensation Insurance

Full Worker's Compensation Insurance shall be provided in accordance with State law.

B. General Liability and Bodily Injury Insurance

CONSULTANT shall obtain and keep in full force and effect, a comprehensive, general liability policy for at least \$500,000 combined limit for bodily injury and property damage; provided that the CITY, its officers, employees, and agents are to be named additional insureds under the policy, and that the policy shall stipulate that this insurance will operate as primary insurance for work performed by CONSULTANT and its subconsultants, and that no other insurance effected by CITY or other named insureds

will be called on to cover a loss covered thereunder. Said policy may contain an exception for bodily injury and property damage claims arising out of the rendering or failure to render professional services by such CONSULTANT, including:

1. The preparation of maps, drawings, reports, surveys, change orders, designs, or specifications; and
2. Supervisory inspection, surveying or engineering services.

C. Professional Liability Insurance

CONSULTANT shall carry professional liability insurance to the amount of \$1,000,000.

D. Certificate of Insurance

CONSULTANT shall complete and file with the CITY's Department of Finance, within fifteen (15) days of the execution of the Agreement, and prior to engaging in any operation or activity set forth in this Agreement, certificates of insurance which shall provide that no cancellation, major change in coverage, or expiration by the insurance company will be made during the term of this Agreement, without thirty (30) days written notice to CITY prior to the effective date of such cancellation, or change in coverage.

ARTICLE 13: NOTICES. All notice herein required shall be in writing and shall be sent by certified or registered mail, postage prepaid, addressed as follows:

TO CITY:

Edward R. James
Director of Public Works
City of Sunnyvale
P.O. Box 60607
Sunnyvale, California 94088

TO CONSULTANT:

Thomas R. Cutting
CH2M HILL
1710 Zanker Road, Suite 102
San Jose, California 95112

ARTICLE 14: CONFORMANCE TO APPLICABLE LAWS. CONSULTANT shall comply with all applicable Federal, State, and municipal laws, rules, and ordinances. No discrimination shall be made by CONSULTANT in the employment of persons to work under this Agreement because of race, color, national origin, ancestry, sex or religion of such person. CONSULTANT shall comply with provisions of CITY's Affirmative Action Contract Compliance Program.

ARTICLE 15: WAIVER. In the event that either CITY or CONSULTANT shall at any time or times waive any breach of this Agreement by the other, such waiver shall not constitute a waiver of any other or succeeding breach of this Agreement, whether of the same or any other covenant, condition or obligation.

ARTICLE 16: ATTORNEY'S FEES. The prevailing party in any action brought to enforce or construe the terms of this Agreement may recover from the other party its reasonable costs and attorney's fees expended in connection with such an action.

ARTICLE 17: BINDING ON SUCCESSORS. This agreement is binding on the heirs, successors, and assigns of the parties hereto and is not to be assigned by either party without first obtaining the written consent of the other.

ARTICLE 18: AMENDMENT. This Agreement may be amended, modified, or changed by the parties provided that said amendment, modification, or change is in writing and approved by both parties.

ARTICLE 19: SCOPE OF Agreement. This writing constitutes the entire agreement between the parties relative to consulting services for the PROJECT.

IN WITNESS WHEREOF, the parties have executed this Agreement the day and year first above written.

ATTEST:
City Clerk

CITY OF SUNNYVALE

By Care Ann Butler
Deputy City Clerk

J. M. Mues
Mayor

APPROVED AS TO FORM:

[Signature]
City Attorney

CH2M HILL CALIFORNIA, INC.

By Thomas R. Cutting
Thomas R. Cutting
San Jose Office Manager

EXHIBIT "A"
TASK ORDER NO. 1
SCOPE OF SERVICES

TASK 1--COORDINATION WITH AFFECTED AGENCIES

A joint meeting of officials from the City, Caltrans, Lockheed, Moffett Naval Air Station, and other affected organizations will be held. This meeting will be conducted in a workshop environment to discuss the study process, obtain data, elicit input regarding improvements, identify constraints, determine evaluation criteria, and designate responsible individuals with each organization for subsequent coordination. Additional information regarding the workshop is presented in Task 5.

Informal one-on-one discussions are anticipated throughout the study process as issues arise that affect a particular organization. Periodic (probably monthly) group meetings will be held to discuss study progress, difficulties, and findings. The meetings will be particularly useful in discussing physical and operational improvement proposals.

Meetings with Caltrans will be given special emphasis because they will play a unique role from the time of this study through construction of the recommended improvements. In addition, Caltrans is planning modifications to Highways 101 and 237 that may impact proposed improvements to Mathilda or the extension of Mary Avenue. Caltrans also has a well-established, bureaucratic procedure for processing proposals for improvements that affect state controlled highways. We intend to work very closely with the District 4 project development staff to identify acceptable improvement alternatives and to define the complete process for adoption and implementation of recommended improvements.

We will provide presentation materials, meeting minutes, and a concise description of Caltrans' process as part of this task.

TASK 2--DATA COLLECTION AND REVIEW

Data to be assembled consist of the North/South Traffic Study, recent traffic volume counts (mechanical and manual), related project reports, and transportation planning data from the Metropolitan Transportation Commission and/or Santa Clara County.

Following review of the available data, we will prepare a data collection program. The program is likely to include manual turning movement counts of key intersections, a limited amount of travel time data, an extension of the employee surveys conducted as a part of the North/South Corridor Study, and an origin-destination (O-D) survey of the Mathilda Avenue intersections with the Route 237 ramps, Ross Drive, and Moffett Park Drive. The data collection program will be finalized in cooperation with city staff prior to field activities.

TASK 3--TRAVEL FORECASTS

A subarea transportation planning model will be established to assist with evaluation of both existing and future traffic volumes in the area. CH2M HILL's model ASSIGN will be used. The model will be set up on a microcomputer that will remain with the City of Sunnyvale following the completion of this TASK ORDER.

We will use data on file with the Metropolitan Transportation Commission or Santa Clara County as a basis for the subarea model. The existing models will be modified to provide detailed traffic assignments in the project study area. County traffic zones in the project area will be subdivided; those adjacent to the study area will be retained, and those in areas some distance from the project study areas will be aggregated.

The land-use data base used to develop existing models will be reviewed to ensure that "build-out" conditions for Sunnyvale are reflected. The trip table will be factored (using the FRATAR technique) to update it to "build-out" conditions as appropriate.

An existing trip table will also be obtained and will be updated (FRATAR) to reflect 1985 conditions. This updated trip table will be assigned to the existing street system, using ASSIGN, and will be calibrated to existing ground counts. When calibrated, the model will be used in the evaluation of improvement alternatives.

The model will also be used to evaluate different mode splits. The trip tables will be adjusted to reflect mode split options and new assignments will be made to test the sensitivity of this type of demand-reducing technique on the transportation system.

The impact of proposed high occupancy vehicle (HOV) lanes on Lawrence Expressway will be evaluated based on expected reductions in travel time for HOVs. A significant reduction in travel time (5 minutes or more) is likely to result in an increase in the use of HOVs on Lawrence Expressway, either by diversion from other routes or from new carpools being formed.

The future roadway network in the project area will be developed by updating the existing network with programmed improvements. This will represent the future "no project" scenario. The future "no project" network will be further updated with proposed improvement alternatives to be evaluated by assigning future traffic.

TASK 4--TRAFFIC OPERATIONS ANALYSES

Traffic operations will be evaluated for both existing and future conditions. The evaluations will be coordinated with previous studies to identify changes and to validate the procedures. A key activity under this task will be the level-of-service analysis at critical locations. The SOAP procedures to calculate intersection levels of service will be utilized. Appropriate calibrations will be made to ensure that the procedure reflects actual conditions on Sunnyvale streets. Both morning and afternoon peak-hour conditions will be evaluated at 15 selected intersections.

The travel time study results will be used to evaluate potentials for diversion of traffic under alternative improvement strategies. A critical area for these evaluations will be the Mathilda Avenue corridor in the U.S. 101/Route 237 vicinity.

Origin-destination surveys will be conducted using two techniques. The employee survey conducted as a part of the North/South Corridor study will be expanded to include other large employers. The completed survey of Lockheed, with a return of 54 percent, should be adequate for this project. The completed survey for National Semiconductor with distribution of the questionnaires through company mail (similar to the Lockheed method) in order to get a higher return will be repeated. We will survey one or two other key employers to expand the data base. The O-D data will be used to verify distribution of work trips and to amass more information on routes chosen by employees. These data will also be useful in evaluating alternative roadway network connections involving Caribbean, Java, and other streets in the Moffett Park area.

A second, more localized O-D survey will be conducted for the Mathilda Avenue/Route 237 interchange area. This survey will be designed to determine specific routings through this congested area so that specific improvement plans can be developed and analyzed. A license plate survey technique will be used.

At the time of the license plate survey, we will also distribute post card interviews to motorists in the Mathilda Avenue/U.S. 101/Route 237 corridor. The post cards will be distributed to motorists stopped at red signals so that delay will not be increased.

Data on traffic signal operations that have been developed in other studies will be refined and expanded as required to determine improvements in traffic flow and capacity that can realistically be expected from signal improvements.

The traffic operations analysis will include the operation of reversible lanes for the Mathilda Avenue Flyover alternative. During the alternatives evaluation phase, a preliminary reversible lane operational plan will be developed to ensure satisfactory operation, including weaving maneuvers. If this alternative is selected as the recommended plan, a refinement of the operations plan will be prepared to include the possibility of automatic control, based on time of day and/or traffic volume patterns.

TASK 5--ALTERNATIVE DEVELOPMENT

The existing North/South Corridor and the Mary Avenue Alignment Feasibility studies include information on several improvement strategies. These will be considered during the formulation of alternatives; however, we will also include other alternatives as discussed earlier.

This task will be started by considering potential alternatives at a screening level. Physical characteristics, operational features, physical and institutional constraints, and environmental factors will be included in the evaluation criteria. As the alternatives are screened, some will be eliminated. The reasons for elimination will be documented for later reference.

Our approach includes a workshop involving our key staff plus representatives from the City of Sunnyvale, Lockheed, Caltrans, and others as appropriate. The initial portion of the workshop will be devoted to a brainstorming session. The purpose of brainstorming is to develop a list of conceivable improvement strategies to resolve the north/south circulation issues. The merits of the ideas will not be discussed during the brainstorming, as the intent of the session is to be creative in suggesting solutions. Discussion and evaluation of the ideas are scheduled for a subsequent part of the workshop.

Another segment of the workshop will be devoted to establishing design and evaluation criteria for the alternatives.

The third portion of the workshop will be the initial evaluation of the ideas developed through brainstorming. The goal will be to reduce the improvement ideas to approximately five major alternatives. Following the workshop, the number of alternatives selected for detailed evaluation may be further reduced to three or four as detailed investigations are undertaken. Aerial photographs will be obtained for use in

the development and investigation of alternatives. Right-of-way and property parcel information will be added to the photographs to identify where acquisitions may be necessary and to clarify areas under Caltrans' jurisdiction.

TASK 6--ALTERNATIVE EVALUATION

The final improvement alternatives will be subjected to rigorous evaluation. It is anticipated that the following areas will be included in the evaluation process.

- o Conceptual layouts at 1" = 40' scale to ensure physical feasibility. Horizontal and vertical alignments will be considered.
- o Traffic impact analyses (level of service, travel time, reserve capacity, etc.) for existing and future traffic
- o Environmental reviews based on a CEQA Initial Study checklist
- o Planning level cost estimate (based on conceptual layouts)
- o Right-of-way impacts
- o Caltrans issues, constraints, procedures
- o Construction phasing and traffic control
- o Conflicts with Lockheed and Moffett Field
- o Accommodations of pedestrians, bicycles, transit vehicles, and HOVs
- o Provisions for emergency and disabled vehicles
- o Potentials for hybrid improvement strategies (revisions and/or combinations of alternatives)

These and other areas dictated by the evaluation and design criteria will be considered for each alternative and will be placed in a matrix format to facilitate review. Qualitative and quantitative values will be assigned to the criteria as appropriate.

TASK 7--PREPARATION OF RECOMMENDATIONS

Based on the evaluations described above, a set of recommended improvements will be identified. Information regarding the various evaluation areas (layouts, forecasts, impacts, conflicts, etc.) will be refined during this task for the selected improvements. Preliminary plans will be prepared to accurately define the improvements as a basis for final design activities.

TASK 8--IMPLEMENTATION PROGRAM

The final task will be to develop a comprehensive program for the implementation of the recommended improvements. It will be based on the requirements of Caltrans and will include local processing, adoption, environmental, and design activities. It will provide a clear, concise outline of all steps necessary to implement the improvements, including a realistic time schedule.

TASK 9--PREPARATION OF REPORTS

A series of four interim technical reports will be prepared during the project. These reports will be summarized and included in the overall project report. The interim technical reports will cover:

- o Traffic operations analyses of existing and future conditions
- o Description and development of improvement alternatives
- o A description of the travel forecasting procedure and calibration of the model
- o The evaluation of alternatives

The overall project report will include summaries of the interim reports and will also include descriptions of the data collection activities, complete details on the recommended improvements, and the implementation program.

EXHIBIT "B"
1985 PER DIEM RATES

<u>Classification</u>	<u>Hourly Per Diem Rate</u>
Engineer 0	\$40.25
Engineer 1	47.25
Engineer 2	52.50
Engineer 3	58.00
Engineer 4	66.50
Engineer 5	75.00
Engineer 6	83.00
Engineer 7	97.00
Technician 1	32.75
Technician 2	38.75
Technician 3	45.75
Technician 4	53.00
Technician 5	62.00
Office	29.00

EXHIBIT "C"

Task	Total Cost	Sunnyvale		Lockheed	
		Share	Cost	Share	Cost
1. Coordination with Agencies	\$ 33,650	70	\$ 23,555	30	\$10,095
2. Data Collection and Review	41,200	80	32,960	20	8,240
3. Travel Forecasts	29,100	80	23,280	20	5,820
4. Traffic Operations Analyses	27,850	80	22,280	20	5,570
5. Alternative Development	19,100	40	7,640	60	11,460
6. Alternative Evaluation	23,350	50	11,675	50	11,675
7. Preparation of Recommendations	13,300	70	9,310	30	3,990
8. Implementation Program	6,700	70	4,690	30	2,010
9. Preparation of Reports	<u>27,100</u>	80	<u>21,680</u>	20	<u>5,420</u>
TOTAL	\$221,350	71%	\$157,070	29%	\$64,280

JOINT FUNDING AGREEMENT

This agreement, made and entered into this 9th day of July, 1985, between the City of Sunnyvale, California ("CITY" herein), a municipal corporation, and Lockheed Missiles and Space Company ("Lockheed" herein), a California corporation,

WITNESSETH:

WHEREAS, City proposes to undertake a comprehensive technical analysis of planning, traffic and engineering issues pertaining to extension and/or improvements to Mary and Mathilda Avenues, in the City of Sunnyvale, through the use of a private consultant; and

WHEREAS, various alternative plans for improvements to these roadways, in the vicinity of the site occupied by Lockheed, pose fundamental direct consequences upon Lockheed's own planning of future uses and improvements upon its property; and

WHEREAS, expanding and intensifying the scope of analysis described above, particularly regarding various alternative plans for roadway improvements in the vicinity of the Lockheed property, will substantially improve Lockheed's ability to plan future uses and improvements upon its property; and

WHEREAS, in reliance upon the terms of this agreement, City has entered into an agreement with the engineering consulting firm of CH2M Hill ("Consultant" herein), providing for particular analysis of the planning and technical consequences of various alternative plans for roadway improvements in the vicinity of the Lockheed site,

which analysis is further described in that certain proposal, as amended, dated April 15, 1985 by Consultant, entitled Engineering Study; Mathilda Avenue Flyover; Mary Avenue Extension (the "Engineering Study" here), which is hereby incorporated by this reference;

NOW THEREFORE, in consideration of the premises and their respective obligations, the parties agree as follows:

1. City shall cause to be completed that certain Engineering Study described above.

2. Lockheed shall contribute to City a portion of the costs of said Engineering Study, in those proportions of the cost of the several component tasks of said study set forth in Exhibit "A", attached hereto and incorporated by this reference. In no event shall Lockheed's contribution exceed the proportion of the actual cost of each component task set forth in Exhibit "A", or exceed the total sum of \$64,280.00.

3. Lockheed shall pay those sums to City which are indicated on monthly invoices, showing the amounts billed to City, and the proportion of said amounts due to City from Lockheed, pursuant to this agreement. Lockheed shall pay each such sum within thirty (30) days following receipt of each invoice.

4. City shall provide to Lockheed, at the conclusion of the Engineering Study, a complete copy of all conclusions, reports, analysis and recommendations generated by consultant, as well as

original or compiled data requested by Lockheed and reasonably available from Consultant.

5. City shall be solely responsible for oversight and direction of the work of Consultant. In the event of termination or substantial modification of the scope of the Engineering Study, having the effect of negating the benefits to Lockheed of the Engineering Study, and following ten (10) days written notice to that effect, Lockheed may terminate this agreement. In such event, Lockheed shall be responsible for payment of those sums owing hereunder which were incurred as of the day said notice of termination was received.

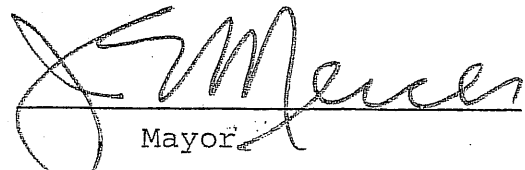
6. Nothing contained herein shall obligate Lockheed to follow, adopt or implement any conclusion or recommendation contained in the Engineering Study. It is understood that Consultant is solely an independent contractor of City, and that Lockheed's obligations are limited to those set forth herein.

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed by their respective agents duly authorized.

LOCKHEED MISSILES & SPACE CO.,
a California Corporation

CITY OF SUNNYVALE,
a Municipal corporation

By 
Manager, Facilities Engineering

By 
Mayor

ATTEST:
City Clerk

By 
Deputy City Clerk

(SEAL)

EXHIBIT "A"

Task	Total Cost	Sunnyvale		Lockheed	
		Share	Cost	Share	Cost
1. Coordination with Agencies	\$ 33,650	70	\$ 23,555	30	\$10,095
2. Data Collection and Review	41,200	80	32,960	20	8,240
3. Travel Forecasts	29,100	80	23,280	20	5,820
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5. Alternative Development	19,100	40	7,640	60	11,460
6. Alternative Evaluation	23,350	50	11,675	50	11,675
7. Preparation of Recommendations	13,300	70	9,310	30	3,990
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9. Preparation of Reports	<u>27,100</u>	80	<u>21,680</u>	20	<u>5,420</u>
TOTAL	\$221,350	71%	\$157,070	29%	\$64,280